

DOCKET NO. FST-CV-155014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	J. D. OF STAMFORD/NORWALK
)	
v.)	
)	AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC)	
ET AL.)	
)	APRIL 8, 2016

**BRIEF IN FURTHER SUPPORT
OF DEFENDANTS' MOTIONS FOR ADMISSION *PRO HAC VICE***

Defendants, Partner Wealth Management, LLC (PWM), Kevin G. Burns, James Pratt-Heaney and William Loftus (the Individual Defendants and, together with PWM, the Defendants) submit this Brief in Further Support of Gerard P. Fox, Esq., Edward D. Altabet, Esq., and Steven I. Wallach, Esq.'s Motions for Admission *Pro Hac Vice* (collectively, the Defendants' Motions).

This Court should grant the Defendants' Motions because the Defendants have established good cause.¹ The crux of the Plaintiff's argument is that that Defendants fail to satisfy good cause because Attorney Fox asserts a longstanding personal relationship with the Defendant, Kevin G. Burns, but not a long-standing attorney-client relationship and that it is unclear as to what specialized skill or expertise Fox, Altabet, and Wallach possess. The Defendants submit an affidavit of Gerard P. Fox in further support of the Defendants' Motions as

¹ This is the second time that the Plaintiff has objected to the Defendant seeking to admit out-of-state counsel of its own choosing. See Order #107.01 (Heller, J.) overruling the Plaintiff's objection to the Defendant's prior motion to admit David Lagasse, Esq. *Pro Hac Vice*; *Fuhrman Affidavit* at ¶3.

well as an affidavit of Jeff Fuhrman, the Chief Financial Officer and Chief Operating Officer of LLBH Private Wealth Management, LLC (LLBH), an affiliated company of PWM. The Defendants respectfully request that the Court grant their motions to admit Gerard P. Fox, Esq., Edward D. Altabet, Esq., and Steven I. Wallach, Esq. in this matter as they have established good cause for the reasons more fully discussed herein.

ARGUMENT

I. Defendants Have Shown Good Cause for Admission of Gerard P. Fox, Esq., Edward D. Altabet, Esq., and Steven I. Wallach, Esq. *Pro Hac Vice*

Section 2-16 of the Connecticut Practice Book provides that an attorney who is in good standing at the bar of another state may, for good cause shown, be permitted to practice before the state courts of Connecticut. Conn. Prac. Book § 2-16. “Good cause” may include “a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, [or] the attorney has acquired a specialized skill or knowledge with respect to the client’s affairs important to the trial of the cause . . .” *Id.* Importantly, these factors *are not exclusive* and the court can determine good cause based on other evidence. *Zogaj v. Kaczmarek*, No. CV075004755S, 2007 Conn. Super. LEXIS 3127 (Conn. Super. Ct. Nov. 27, 2007) (*emphasis added*).

The decision to grant or deny an application to appear *pro hac vice* rests within the sound discretion of the court of which it has broad discretion. *Stamford Wrecking Co. v. City of New Haven*, No. CV075013102S, 2008 Conn. Super. LEXIS 2398, at *4-5 (Super. Ct. Sep. 23, 2008) citing *Enquire Printing and Publishing Co. v. O'Reilly*, 193 Conn. 370, 373-75, 477 A.2d 648 (1984) (citations omitted; internal quotations omitted). A trial court entertaining an application for admission *pro hac vice* must also consider the interests of the client who seeks to have the out-of-state attorney admitted. *Id.* The right to have counsel of one's own choice, although not absolute, is important enough to require a legitimate state interest before a person can be deprived of that right. *Id.* In fact, the Practice Book rule embodies this constitutional mandate, requiring the court to consider the facts or circumstances affecting the personal or financial welfare of the client, when reviewing the application. *Id.* This limited scope of inquiry strikes the balance between the state's interest in regulating attorneys seeking to be admitted to practice *pro hac vice* and the litigant's interest in obtaining counsel of his own choice. *Id.* In this period of greater mobility among members of the bar and the public, and the corresponding growth in interstate business, a court should reluctantly deny any application to appear *pro hac vice*. *Id.* A litigant's request to be represented by counsel of his choice, when freely made, should be respected by the court, unless some legitimate state interest is thwarted by admission of the out-of-state attorney. *Id.*

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Here, the Plaintiff incorrectly argues that the Defendants' Motions fail to establish good cause due to Fox having only a personal relationship with Defendant Burns. See *Plaintiff's Opposition*, p. 4. Fox provides additional context to statements made in his initial affidavit and further asserts that as part of his longstanding personal relationship with the Defendant Burns, he has consulted with him on legal matters for the past decade. *4/8/16 Fox Affidavit*, ¶3. Additionally, after PWM opened an office in Los Angeles, where Fox's firm has an office, PWM engaged his firm regarding various corporate matters for which he advises PWM and the Individual Defendants. *Id.*, ¶4. Fox also asserts that in the event that this litigation settles, such settlement will likely require consideration of corporate-law issues, on which his firm will be advising PWM and the Individual Defendants. *Id.*, ¶5.

Even without the present circumstances—where the Defendants' Motions assert both a personal and professional relationship—courts have granted out-of-state attorneys admission in Connecticut matters where a pre-existing attorney-client relationship was completely lacking. For instance, in *Stamford Wrecking Co. v. City of New Haven*, No. CV075013102S, 2008 Conn. Super. LEXIS 2398, at *4-5 (Super. Ct. Sep. 23, 2008), the Court (Bellis, J.), although finding no prior relationship between the attorneys seeking to be admitted *pro hac vice* and the plaintiff that was requesting their representation, appropriately afforded significant deference to the plaintiff's desire to have counsel of its own choosing and permitted same. *Id.* at 9-10. The *Stamford Wrecking* court rejected arguments similar to those being made by the Plaintiff regarding a lack

of good cause. The court held that the party seeking to admit out-of-state attorneys was entitled to have the representation of their choosing. The *Stamford Wrecking* court concluded that there was “no indication of any legitimate state interest that would override a party’s right to have counsel of its own choosing.” *Id.*

In this instance, the Plaintiff attempts to claim an overriding state interest by generally stating that seasoned Connecticut counsel is already representing the Defendants and that no specific “specialized skill or knowledge” as to Attorneys Fox, Altabet, or Wallach has been established. See *Plaintiff’s Opposition*, p. 5. Such general statements made by the Plaintiff are insufficient to establish a “legitimate state interest” to override the Defendants’ choice of counsel, a preference further confirmed by Jeff Fuhrman, the Chief Financial Officer and Chief Operating Officer of LLBH, an affiliated company of PWM. Mr. Fuhrman confirms that PWM and the Individual Defendants prefer to have Attorneys Fox, Altabet, and Wallach represent them in this matter in lieu of prior out-of-state counsel and that they are continuing to retain the same Connecticut counsel. *Fuhrman Affidavit*, ¶¶1; 5; 6. The Defendants additionally submit that the Plaintiffs have no standing to interpose objections to the Defendants’ Motions as there is no cognizable private interest possessed by a party as to who the adverse party retains as its counsel. Rather, there are very limited categories of state interests which have been judicially determined to be sufficient to compel the denial of motions for *pro hac vice* admission.

The first relevant interest is the court's efficiency and docket control. In *Herrmann v. Summer Plaza Corp.*, 201 Conn. 263, 269 (1986), our Supreme Court stated that "[t]here is a legitimate state interest in granting the trial court the power to control its own docket." In *Herrmann*, the Supreme Court affirmed the trial court's denial of the *pro hac vice* motion of an out-of-state attorney, as the granting of such motion would have "necessitated further continuance of the case" and would have thwarted the legitimate state interest "of docket control and expeditious caseflow management." *Id.*, 270.

The Plaintiff does not make this claim nor is there a legitimate basis to assert same. Rather, the opposite appears to have occurred in that when Plaintiff's counsel was advised by the Defendant's former out-of-state counsel, David Lagasse, Esq. of Mintz Levin Cohn Ferris Glovsky and Popeo PC, that the Defendants were intending to retain Attorney Fox, Plaintiff's counsel, Thomas Rechen, Esq. requested a meeting to discuss the matter and did meet with Attorneys Fox and Altabet. If anything, Attorneys Fox, Altabet, and Wallach have indicated a willingness and desire to proceed in an expeditious and efficient manner. By granting the applications of all three, there will be greater efficiency and fewer occasions of scheduling conflicts as Attorneys Altabet and Wallach are resident in the New York office while Attorney Fox currently divides his time between Los Angeles and New York. *4/8/16 Fox Affidavit*, ¶7. Further, as indicated by Fuhrman, the Defendants continue to retain the same Connecticut Counsel of Berchem, Moses & Devlin, PC. *Fuhrman Affidavit*, ¶ 6.

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The second circumstance in which our courts have found a legitimate state interest concerns the potential for ethical violations. “The legitimate state interest thwarted by the admission of an out-of-state attorney, sufficient to overcome the litigant’s right to have counsel of his choice, generally involves ethical problems caused by allowing out-of-state counsel to appear.” *Yale Literary Magazine v. Yale University*, 4 Conn.App. 592, 605, 496 A.2d 201 (1985), *aff’d*, 202 Conn. 672, 522 A.2d 818 (1987). See, e.g., *Enquire Printing & Publishing Co. v. O’Reilly*, 193 Conn. 370, 374-77, 477 A.2d 648 (1984) (where both parties intended to call the defendants’ out-of-state attorney as a witness during the trial, the attorney would be unable to represent the defendants pursuant to the Code of Professional Responsibility); *Gamlestaden PLC v. Lindholm*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 93 0127912, 1994 Conn. Super. LEXIS 1667 (Karazin, J., June 29, 1994) (the court found a conflict with the out-of-state attorneys’ representation of the defendants in violation of the Rules of Professional Conduct, namely, the existence of a continuing attorney-client relationship with an entity related to the case, where confidential information had been exchanged). Here, the Plaintiff makes no such arguments.

Accordingly, because the Defendants have shown good cause, the Court should grant the Defendants’ Motion for Fox, Altabet, and Wallach admission *pro hac vice*.

CONCLUSION

For all the foregoing reasons, the Defendants respectfully request that the Court grant Gerard P. Fox, Esq., Edward D. Altabet, Esq., and Steven I. Wallach, Esq.'s motions for admission *pro hac vice*.

THE DEFENDANTS,
PARTNER WEALTH MANAGEMENT, LLC,
KEVIN G. BURNS, JAMES PRATT-HEANEY,
AND WILLIAM LOFTUS

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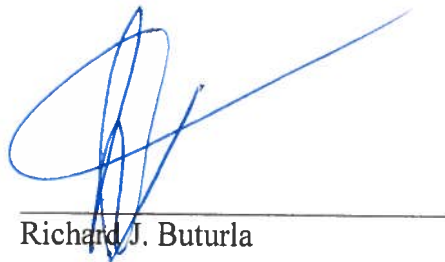
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was e-mailed and mailed to all counsel of record on this 8th day of April, 2016.

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DOCKET NO.: FST CV15 50148-08 S	:	SUPERIOR COURT
WILLIAM A. LOMAS	:	J.D. OF STAMFORD/NORWALK
VS.	:	AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC ET AL.	:	APRIL 8, 2016

**AFFIDAVIT OF GERARD P. FOX
IN FURTHER SUPPORT OF MOTIONS FOR ADMISSION PRO HAC VICE**

STATE OF NEW YORK)	
)	ss:
COUNTY OF NEW YORK)	

GERARD P. FOX, being duly sworn, deposes and says:

1. I am over 18 years of age and believe in the obligations of an oath. I hereby certify that the following statements are true to the best of my knowledge, information, and belief.

2. I submit this affidavit in further support of the defendants' motions to admit me and Attorneys Steven I. Wallach and Edward D. Altabet of my firm, Gerard Fox Law P.C., *pro hac vice* on behalf of and to represent in this matter the common interests of Partner Wealth Management, LLC (PWM) and Kevin G. Burns, James Pratt-Heaney and William Loftus (the Individual Defendants, together with PWM, the Defendants), to expand on the statements that I

made in my initial affidavit, and in reply to the objection filed by the plaintiff, William A. Lomas.

3. As part of my longstanding personal relationship with the defendant Mr. Burns, I have consulted with him on legal matters for the past decade.

4. After the defendant Partner Wealth Management, LLC (PWM), opened an office in Los Angeles, where my firm has an office, PWM engaged my firm regarding corporate matters. For these matters, I and my partner Flore Kanmacher are advising PWM and the Individual Defendants.

5. If this litigation is to settle, the settlement will likely require consideration of corporate-law issues, on which my firm will be advising PWM and the Individual Defendants.

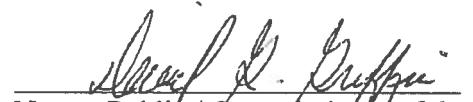
6. In view of these facts and those provided in my Affidavit dated March 24, 2016, I possess specialized skill and knowledge with regard to Defendants' affairs which will be of benefit to them in litigating this matter.

7. I currently divide my time between my firm's Los Angeles and New York offices. My partner Steven Wallach and Edward Altabet, who is of counsel to my firm, are resident in the New York office. In my absence they will be able if needed to assist Defendants' Connecticut counsel, Berchem, Moses & Devlin, P.C. In view of these facts and those provided in Attorney Wallach's and Attorney Altabet's respective Affidavits dated March 24, 2016, they

also possess specialized skill and knowledge with regard to Defendants' affairs which will be of benefit to them in litigating this matter.


Gerard P. Fox

Subscribed and sworn to before me this 8 day of April, 2016.


Notary Public / Commissioner of the
Superior Court

DAVID GRIFFIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GR6146015
Qualified in New York County
My Commission Expires 9-28-18

DOCKET NO.: FST CV15 50148-08 S : SUPERIOR COURT
WILLIAM A. LOMAS : J.D. OF STAMFORD/NORWALK
VS. : AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC
ET AL. : APRIL 8, 2016

**AFFIDAVIT OF JEFF FUHRMAN
IN SUPPORT OF MOTIONS FOR ADMISSION PRO HAC VICE**

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

JEFF FUHRMAN, being duly sworn, deposes and says:

1. I am over 18 years of age and believe in the obligations of an oath. I am the Chief Financial Officer (CFO) and Chief Operating Officer (COO) of LLBH Private Wealth Management, LLC (LLBH), an affiliated company of the defendant, Partner Wealth Management, LLC (PWM), and, as such, have personal knowledge of the statements made in this Affidavit.
2. I submit this Affidavit in further support of the defendants' motions to admit Attorneys Gerard P. Fox, Steven I. Wallach, and Edward D. Altabet of the law firm of Gerard Fox Law P.C. to appear *pro hac vice* and represent in this matter the common interests of PWM

and Kevin G. Burns, James Pratt-Heaney and William Loftus (the Individual Defendants, together with PWM, the Defendants) and in reply to the objection and filed by the plaintiff, William A. Lomas, dated April 5, 2016 (Dkt. No 143).

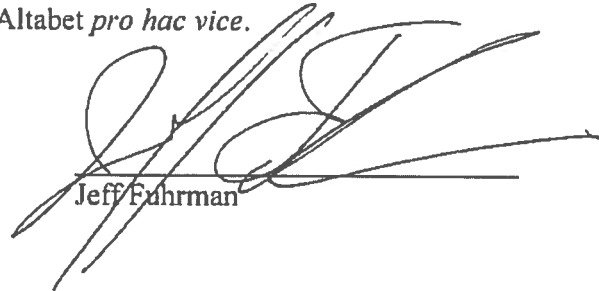
3. This is the second time that Mr. Lomas has objected to Defendants' choice of counsel. On July 29, 2015, Defendants moved for permission to have Attorney David R. Lagasse appear *pro hac vice*. Dkt. No. 104. Mr. Lomas objected to the motion with a memorandum of law (Dkt. No. 107) and his own affidavit (Dkt. No. 108). The Court granted Defendants' motion and overruled the objection. Order Nos. 104.01, 104.02, 107.01.

4. This time Mr. Lomas submits no affidavit in support of his motion.

5. My understanding is that, in Connecticut, a litigant has a nearly unqualified right to counsel of its choice. In the approximately nine months since moving to have Attorney Lagasse admitted *pro hac vice*, with the Defendants participating in proceedings in this action and in settlement discussions with Mr. Lomas through his counsel, PWM and the Individual Defendants have concluded that they will be better served having Attorneys Fox, Wallach, and Altabet represent them.

6. The Defendants are continuing to retain our Connecticut counsel, Berchem, Moses & Devlin, P.C.

7. The Defendants respectfully request that this Honorable Court grant the motions to admit Attorneys Fox, Wallach, and Altabet *pro hac vice*.



Jeff Fahrman

Subscribed and sworn to before me this 8th day of April 2016.



Notary Public - Commissioner of the
Superior Court
MICHAEL J. KAZAKEWICH
NOTARY PUBLIC
State of Connecticut
My Commission Expires October 31, 2018